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JAN 13 2004

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JAN 13 2004

OFFICE OF THE DIRECTOR
TC 3600

In re Application of
William V. Vanderminden
Application No. 09/126,194
Filed: July 30, 1998
For: BAR CART

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on November 7, 2003.

The petition is **DISMISSED**.

A review of the file records reveals that a Notice of Allowability and a Notice of Allowance and Fee(s) Due (hereinafter "Notices") were mailed to applicant on May 30, 2003. Since the issue fee has not been received, the application was held abandoned, and a Notice to that effect was mailed on September 30, 2003.

Applicant submits that the above Notices were never received and provides copies of docket records presumably to take advantage of the procedure outlined in 1156 O.G. 53 and MPEP 711.03(c) for withdrawing an abandonment in an application having a non-received Office correspondence.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.


The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of September 2, 2003. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Notices were not received. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Notices were not received. Applicant has submitted a copy of the docket record where the non-received Notices would have been entered as being due on and around the date of September 2, 2003. However it appears that, at some point, applicant's correspondence addressed changed. The address on record with the Office is the Six Becker Farm Road address, as requested in the "change of address" paper received on May 25, 2000 from applicants. It is noted the address at the bottom of the petition to withdraw the holding of abandonment is Five Becker Farm Road. Since 1156 OG 53 is predicated upon the fact that applicant is able to receive the correspondence at the correspondence address of record, applicant's statement above and the showing of non-receipt of the Notices need to be reflective of the original correspondence address, the Six Becker Farm Road address, which was the correspondence address of record on May 30, 2003, the date the Notice of Allowability and the Notice of Allowance were mailed.

For this petition only a copy of this decision will be sent to the Five Becker Farm Road address but the correspondence address on record with the Office will not be changed.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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SNM/cps: 1/8/04

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